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Attorneys for Defendants
CITY OF MENLO PARK and DAVE BERTINI

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS (TSH)

**SUPPLEMENTAL DECLARATION OF
TODD H. MASTER IN REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION
OF DEFENDANTS CITY OF MENLO
PARK AND DAVE BERTINI FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL SUMMARY
JUDGMENT**

Date: March 18, 2021

Time: 1:30 p.m.

Dept.: Courtroom 3

Judge: Hon. Richard Seeborg

Trial Date: None

I, TODD H. MASTER, declare:

1. I am an attorney at law licensed to practice before this Court, and a principal in the

SUPPLEMENTAL DECLARATION OF TODD H. MASTER IN REPLY TO PLAINTIFF'S OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT OF DEFENDANTS CITY OF
MENLO PARK AND DAVE BERTINI; Case No. 17-cv-07357-RS (TSH)

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1 law firm Howard, Rome, Martin & Ridley LLP, counsel of record for defendants City of Menlo
2 Park and Dave Bertini, herein. I am a competent adult, with personal knowledge of the matters
3 set forth in this declaration. If called as a witness, I could and would competently testify to such
4 matters.

5 2. Attached hereto as Exhibit "A" are true and correct copies of excerpts from the
6 transcript for the March 19, 2019 (first session) deposition of defendant Dave Bertini. I attended
7 and was present during the deposition of Chief Bertini.

8 4. Attached hereto as Exhibit "B" are true and correct copies of excerpts from the
9 transcript for the March 3, 2020 deposition transcript of Nicolas Flegel. I attended and was present
10 during the deposition of this witness.

11 I declare under penalty of perjury under the laws of the State of California and the United
12 States of America that the foregoing is true and correct and that this declaration was executed on
13 this 11th day of February 2021, at San Mateo, California.

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15 
16 Todd H. Master

Exhibit A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE MATTER OF:)
)
)
)
MICHAEL ZELENY,)
)
Plaintiff,)
)
vs.) CASE NO. CV 17-7357 JCS
)
EDMUND G. BROWN, JR., et al.,)
)
Defendant.)
)

VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI
VOLUME I

Menlo Park, California
Tuesday, March 19, 2019

Stenographically Reported by:
HEATHER J. BAUTISTA, CSR, CRR, RPR

1 correct?

2 A. Yes.

3 Q. This is the special event permit website?

4 A. That is correct.

13:28 5 Q. Does the website accurately describe the
6 process and qualifications for special events?

7 A. Yes.

8 Q. If you could turn to the last page, please.

9 There's a reference at the very bottom -- maybe it's not
13:29 10 the bottom; about a third of the way down the physical
11 page, there's a reference to "film permits."

12 Do you see that?

13 A. Yes.

14 Q. To your knowledge, does -- strike that.

13:29 15 As the person most qualified on behalf of the
16 City of Menlo Park, does the City have any written
17 criteria for grant or denial of film permits?

18 A. Yes.

19 Q. Where are those criteria?

13:29 20 A. They are available from the Department of
21 Public Works in the form of an FAQ, frequently asked
22 questions, and also an encroachment permit.

23 MR. ROBINSON: Sorry. Could we go off for 30
24 seconds.

13:29 25 THE VIDEOGRAPHER: We are now going off the

1 I, HEATHER J. BAUTISTA, CSR No. 11600, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken before
4 me at the time and place therein set forth, at which
5 time the witness declared under penalty of perjury; that
6 the testimony of the witness and all objections made at
7 the time of the examination were recorded
8 stenographically by me and were thereafter transcribed
9 under my direction and supervision;

10 That the foregoing is a full, true, and correct
11 transcript of my shorthand notes so taken and of the
12 testimony so given;

13 () Reading and signing was requested.

14 () Reading and signing was waived.

15 (XX) Reading and signing was not requested.

16 I further certify that I am not financially
17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties, nor of any of
19 the parties.

20 I declare under penalty of perjury under the laws
21 of California that the foregoing is true and correct.

22 Dated: March 31, 2019

23

24

HEATHER J. BAUTISTA, CSR, CRR, RPR, CLR

25

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ZELENY, an individual,)
)
Plaintiff,)
)
vs.) No. CV 17-7357 JS
)
EDMUND G. BROWN, JR., an)
individual, in his official)
capacity; XAVIER BECERRA, an)
individual in his official)
capacity; CITY OF MENLO PARK,)
a municipal corporation; and)
DAVE BERTINI, an individual,)
in his official capacity,)
)
Defendants.)
)

VIDEOTAPED DEPOSITION OF NICOLAS FLEGEL
Menlo Park, California
Tuesday, March 3, 2020

Reported by:
JANIS JENNINGS
CSR No. 3942, CLR, CCRR
Job No. 3985721

1 BY MR. MARKEVITCH: 11:30

2 Q. Are you aware of any written factors 11:30

3 or policies that the staff would apply to that 11:30

4 analysis? 11:30

5 MR. MASTER: Objection. Vague and 11:30

6 ambiguous. 11:30

7 THE WITNESS: Written -- well, I mean, 11:30

8 there's the vehicle code, there's other California 11:30

9 law. 11:30

10 BY MR. MARKEVITCH: 11:30

11 Q. Anything specific? 11:30

12 A. And there's municipal code. I mean, there 11:30

13 is an encroachment permit process for this. There's 11:30

14 a -- in terms of other specific factors? No. 11:30

15 Q. So when you say the "encroachment process," 11:30

16 could you describe specifically what -- you know, 11:30

17 what portion of that process would be applied to 11:30

18 determining whether or not the various placement is 11:30

19 appropriate or not. 11:30

20 A. An encroachment permit is to determine 11:30

21 whether or not the sidewalk needs to be shut down or 11:30

22 not to allow him to do his filming. 11:30

23 Q. Assuming -- assuming -- this is a 11:31

24 hypothetical -- the sidewalk does terminate in the 11:31

25 location that I was pointing out to you -- 11:31

1 A. Uh-huh. 11:31

2 Q. -- would anything need to be shut down 11:31

3 if there was, you know, one or two people standing 11:31

4 there, a generator, and a display? 11:31

5 MR. MASTER: Vague and ambiguous. It's an 11:31

6 incomplete hypothetical. 11:31

7 THE WITNESS: Yeah, I can't answer that. 11:31

8 BY MR. MARKEVITCH:

9 Q. Why not?

10 A. I don't know. It's a hypothetical I can't 11:31

11 answer. 11:31

12 Q. Okay. So, well, I mean, if they're standing 11:31

13 at a point where the sidewalk terminates anyway and 11:31

14 the equipment is standing there, what would need to 11:31

15 be shut down? 11:31

16 MR. MASTER: Well, it's an incomplete 11:31

17 hypothetical. It's vague, ambiguous, and overbroad. 11:31

18 It lacks foundation and calls for speculation. 11:31

19 THE WITNESS: So that's not my call of what 11:31

20 would need to be shut down. That would -- you're 11:31

21 going to have to ask staff on that. 11:31

22 BY MR. MARKEVITCH: 11:31

23 Q. Okay. So you don't know? 11:31

24 A. I don't know. 11:31

25 Q. Okay. And do you know what -- whether or 11:31

1 not in making that determination the staff would 11:31
2 look at any written material? 11:31
3 MR. MASTER: Objection. Asked and answered. 11:31
4 THE WITNESS: I think I answered that. 11:31
5 BY MR. MARKEVITCH: 11:32
6 Q. Okay. You mentioned municipal codes. 11:32
7 A. Municipal codes, California law, vehicle 11:32
8 code. 11:32
9 Q. Okay. Any specific sections of those codes 11:32
10 that you're aware of that the staff would be looking 11:32
11 at? 11:32
12 MR. MASTER: Lacks foundation. Calls for 11:32
13 speculation. 11:32
14 THE WITNESS: Yeah, me? No. 11:32
15 BY MR. MARKEVITCH: 11:32
16 Q. You don't know? 11:32
17 A. I don't know. 11:32
18 Q. How many film permits have you worked on for 11:32
19 the City of Menlo Park? 11:32
20 A. Very few. 11:32
21 Q. Two? 11:32
22 A. Maybe two, maybe three. 11:32
23 Q. Do you remember the other one or two permits 11:32
24 that you worked on in addition to Mr. Zeleny's? 11:32
25 A. Very vaguely. I remember discussing with 11:32

1 THE WITNESS: Other than it looks as if 12:08
2 Mr. Toews just replied all to the same email thread. 12:08
3 BY MR. MARKEVITCH: 12:09
4 Q. Were you at this time assigned to work on 12:09
5 Mr. Zeleny's film permit? 12:09
6 A. I don't know if I was ever assigned to work 12:09
7 on Mr. Zeleny's film permit. But, no, at this time, 12:09
8 no. 12:09
9 Q. Do you remember if at the time of this email 12:09
10 you were intending to review the application that 12:09
11 Mr. Zeleny would submit? 12:09
12 A. No. 12:09
13 Q. No, you don't remember; or, no, you were not 12:09
14 intending to review the application? 12:09
15 A. I don't remember, and I was not intending to 12:09
16 review anything. 12:09
17 MR. MARKEVITCH: Exhibit 68. 12:09
18 (Exhibit 68 marked for identification.) 12:09
19 BY MR. MARKEVITCH: 12:10
20 Q. Mr. Flegel, please take a look at this 12:10
21 document and let me know if you recognize it. 12:10
22 A. I do. 12:10
23 Q. Is this the film permit application 12:10
24 submitted by Mr. Zeleny? 12:10
25 A. This is -- so this is certainly the 12:10

1 encroachment permit application. I don't know if 12:10
2 there were additional documents attached to this or 12:10
3 provided at this specific time. 12:10

4 Q. What is the function of this encroachment 12:10
5 permit in the context of Mr. Zeleny submitting it? 12:10

6 A. Well, this is the film permit. That's the 12:10
7 entire function. 12:11

8 Q. If you go page 3 of this document. 12:11

9 A. Uh-huh. 12:11

10 Q. You can see it looks like there's an email 12:11
11 from Mr. Zeleny -- 12:11

12 A. Uh-huh.

13 Q. -- and I'm just going represent that it 12:11
14 looks like this is the email to which he attached 12:11
15 the encroachment application that we were just 12:11
16 looking at. Does that sound correct, Mr. Flegel? 12:11

17 A. It looks correct. 12:11

18 Q. And in this email there's some additional 12:11
19 information regarding the application of Mr. Zeleny; 12:11
20 correct? 12:11

21 A. Yes. 12:11

22 Q. Did you review this email at any time prior 12:11
23 to today? 12:11

24 A. Yes. 12:11

25 Q. When did you review it for the first time? 12:11

1 I, JANIS JENNINGS, CSR No. 3942, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken
4 before me at the time and place therein set forth, at
5 which time the witness was duly sworn by me;

6 That the testimony of the witness, the
7 questions propounded, and all objections and statements
8 made at the time of the examination were recorded
9 stenographically by me and were thereafter transcribed;

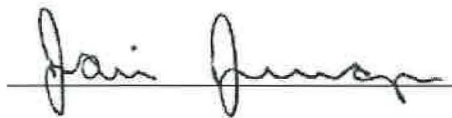
10 That the foregoing pages contain a full, true
11 and accurate record of all proceedings and testimony.

12 Pursuant to F.R.C.P. 30(e)(2) before
13 completion of the proceedings, review of the transcript
14 [] was [X] was not requested.

15 I further certify that I am not a relative or
16 employee of any attorney of the parties, nor financially
17 interested in the action.

18 I declare under penalty of perjury under the
19 laws of California that the foregoing is true and
20 correct.

Dated this 12th day of March 2020

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JANIS JENNINGS, CSR NO. 3942

25 CLR, CCRR